The Hearing of the Union's Case

26. Counsel for the bank agreed that if the tribunal found that Mr. Yeoh had in fact been promoted to be regional officer all benefits attached to the post should be accorded to Mr. Yeoh.

27. Mr. Dhoss thereupon raised no objection to a separate award being made in respect of the bank's case.

28. The hearing of the union's case was fixed for hearing on 13th, 14th & 15th September, 1965.

MALAYAN COMMERCIAL BANKS' ASSOCIATION v. NATIONAL UNION OF BANK EMPLOYEES (No. 2)

[I.A.T. (Sir George Oehlers, Chairman; Chooi Mun Sou, Hanafiah bin Hussain and Koh Kim Leng, Members) October 26, 1965]

[K.L. — Industrial Arbitration Tribunal Case No. 3 of 1965]

Industrial dispute — Abandonment of original claims — Definition of "promotion" — Claim for pay and allowance etc. — Allowance for officiating — Union representation — Right of association.

This award dealt with a trade dispute as referred to the tribunal by the Minister wherein the union contended that the bank by denying the promotion of the two employees named were victimising them because of their union membership and thereby interfering with the right of freedom of association of its employees. The union in its statement of case asserted that one of the two employees so named was the substantive holder of the post of regional officer in the bank as from February 9, 1965 and that he had been denied the pay and allowance and other conditions of service that were related to and were commensurate with the post of regional officer. The union requested the tribunal to make an award to the employer concerned for all pay and allowances and other conditions of service due to him as substantive holder of and discharging the duties and responsibilities of regional officer at the bank since February 9, 1965. The union contended that the word "promotion" had two connotations, firstly the actual appointment to a higher post and secondly, after such an appointment, the granting of privileges etc. attached to the post.

Opinions of Findings: (1) it was apparent from the statement of cases that the union by confining its case to the question of the the promotion of one of the employees and by asserting that that employee had, in fact, been promoted to the post of regional officer had abandoned its original demands;

(2) the second interpretation sought to be placed by the union on the word "promotion" cannot possibly be accepted, more especially in the light of the plain language used in the documents referred to;

(3) the tribunal found that the employee was not promoted as claimed and accordingly decided that the employee was not the substantive holder of any post of regional officer in the bank and consequently he was not entitled to the pay and allowances and other conditions of service that would have been due to him as substantive holder of and discharging the duties and responsibilities of a regional officer;

(4) the tribunal considered that an appropriate allowance should be paid to the employee for officiating as a regional officer and suggested that the amount of such allowance should be negotiated between the bank and the union within a period of one month. Failing agreement within that period, either party would be at liberty to come before the tribunal again;

(5) it was the undoubted right of workers to establish and join unions or associations of their own choice, but questions arose firstly as to whether or not there should be some prohibition against persons who aspire to be appointed and promoted to managerial positions being or continuing to be officers or members of any particular union and secondly should that question be answered in the affirmative, what positions would be considered to be managerial position in each particular instance. The tribunal was not called upon to answer those questions but expressed the hope that during the negotiations then in progress in relation to the union's representation of the staff of the bank, the points referred to and raised by the award would be included amongst the matters discussed.

INDUSTRIAL ARBITRATION DISPUTE.

Eusoffe Abdoolcader (*R. C. Hoffman* with him) for the Bank.

M. S. Dhoss for the Union.

AWARD

This trade dispute between the Hongkong & Shanghai Banking Corporation (hereinafter referred to as "the bank") and the National Union of Bank Employees, Federation of Malaya (hereinafter referred to as "the union") which was on the 23rd of June, 1965 referred to the tribunal by the Minister for Labour under the provisions of paragraph (4) of Regulation 4 of the Essential (Arbitration in the Essential Services) Regulations, 1965, resolved itself into two main issues, one an issue of principle on the question of the bank's and the union's rights in relation to the promotion and transfer of staff (hereinafter referred to as "the bank's case") and the other an issue of fact in relation to the question of the promotion of Mr. Yeoh Teck Chye (hereinafter referred to as "the union's case").

The Bank's Case

2. The bank's case was heard on the 11th of August, 1965 and on the 2nd of September, the tribunal handed down its award in relation thereto, there being no objection raised by Mr. Dhoss, representing the union, to a separate award being made in respect of the bank's case. (See paragraph 27 of that award).

The Union's Case

3. The union's case was heard on the 14th of September, 1965, 15th September, 1965 and 5th October, 1965.

4. This award is in relation to the union's case.

The Reference

5. As appears in paragraph 3 of the award relating to the bank's case, the dispute as reported on the 10th of June, 1965 to the Minister

by the union arose over the failure of the bank to promote Messrs. Yeoh Teck Chye and A. M. John as regional officers, the union contending that whilst this dispute was being dealt with on reference to the Commissioner for Industrial Relations under an agreed grievance procedure, the situation had been aggravated by the promotion of Mr. Chow Mun Hup to the post of regional officer.

6. Further, as indicated in paragraph 5 of the said award, the union contended that the bank by denying the promotion of Messrs. Yeoh Teck Chye and A. M. John were victimising them because of their union membership and thereby interfering with the right of freedom of association of its employees.

The Issues

7. In its statement of case the bank referred to two demands made by the union as follows:—

"(1) that Messrs. Yeoh Teck Chye and A. M. John, holding the post of staff officers in the bank, should be promoted to the grade of regional officers, the union alleging that the officers were denied promotion because of their union membership.

(2) that the promotion of Mr. Chow Mun Hup to the grade of regional officer should be cancelled, or alternatively that the bank should promote all officers in the grade of staff officers to the grade of regional officer. Coupled with this demand was a demand that the transfer of one of its staff officers, Mr. Boey Seng Ngow from its Kuala Lumpur office to its office in Petaling Jaya, in consequence of Mr. Chow's promotion, should be revoked and Mr. Boey returned to the Kuala Lumpur office."

(See paragraph 6 of the said award).

8. In its statement of case, the union alleged that Mr. Yeoh Teck Chye had, in fact, been promoted to the post of regional officer and made the following submissions:—

"(1) that Mr. Yeoh Teck Chye is the substantive holder of the post of regional officer in the bank as from 9th February, 1965.

(2) that Mr. Yeoh had been denied the pay and allowances and other conditions of service that are related to and are commensurate with the post of regional officer."

(See paragraph 9 of the said award).

9. Based on the facts and evidence the union requested the tribunal "to make an award to Mr. Yeoh for all pay and allowances and other conditions of service due to him as substantive holder of and discharging the duties and responsibilities of regional officer at the bank since 9th February, 1965." (See paragraph 10 of the said award).

10. The tribunal found that it was apparent from the statements of cases that the union by confining its case to the question of promotion of Mr. Yeoh and by asserting that Mr. Yeoh had, in fact, been promoted to the post of regional officer had abandoned its original demands. (See paragraph 11 of the said award).

11. In effect, the only issue in the union's case before the tribunal was as to whether or not Mr. Yeoh Teck Chye had, in fact, been promoted to be a regional officer as from the 9th of February, 1965, it having been conceded by the bank through its counsel that if the tribunal find in favour of Mr. Yeoh, all benefits attached to the post should be accorded to Mr. Yeoh. (See paragraph 26 of the said award).

The Hearing

12. In the course of the hearing, counsel for the bank pointed out that the union's claim as presented before the tribunal was inconsistent with the complaint made by Mr. Yeoh as indicated in the documents appended to the statement of case of the bank and in the reference made by the Minister to the tribunal, that is to say, the complaint was that Mr. Yeoh had been unjustly denied promotion to the grade of regional officer and not, as now alleged before the tribunal, that he had, in fact, been promoted to be a regional officer.

13. The union, through its representative Mr. Dhoss and by evidence adduced on its behalf, contended that the word "promotion" had two connotations, firstly, the actual appointment to a higher post and, secondly, after such an appointment, the granting of privileges, etc. attached to the post. It was this second meaning that the union maintained should be read into the documents referred to.

14. The documents referred to and the relevant paragraphs therein are as follows:—

(1) Petition dated the 9th of March, 1965. (Annexe 'C').

"Nearer home at the bank itself union membership is held against job prospects and promotions. Two of the principal officers of the union are senior members of the staff. They are carrying out important functions in the bank yet, it appears to us that neither of them is likely to be promoted so long as they are union members and officials. This is a sad conclusion but true.

For some considerable time, and even lately, promotions were considered, and these two were overlooked. Based on merit, responsibility and seniority, it is highly doubtful if any of those considered for promotion above them were better than them. We can only come to one conclusion, and that is, union membership is held against them."

(2) Letter dated the 7th of April, 1965 from the union to the bank. (Annexe 'F').

"With reference to our joint meeting held on 2nd April, 1965 in connection with the dispute of promotion of two of your staff officers, namely, Messrs. Yeoh Teck Chye and A. M. John to regional officers, I have to advise you that my committee is fully convinced that you are holding union membership against their promotion.

My union will definitely not further tolerate such victimisation especially directed against two of our top officials and would request you to reconsider your attitude and promote them accordingly."

(3) Minutes of an Inter-Relations Committee Meeting held at 5.15 p.m. on 28.5.1965. (Annexe 'H').

"1. We understand that it is the intention of management to promote Chow Mun Hup to regional officer. Is this correct?

. . . . . .

3. We are to advise you that the staff of Hongkong Bank protest very strongly on this promotion which very clearly indicates management's true intention, i.e. to stagnate union members' promotion thus causing frustration.

Mr. Yeoh Teck Chye who is currently doing a regional officer's job is denied promotion although he is head and shoulders above Chow Mun Hup in every respect. This clearly proves that it is management's policy to humiliate and victimise officers who are union members.".

15. The tribunal have already indicated that it was apparent from the statements of cases and from the union's confining its case to the assertion that Mr. Yeoh had, in fact, been promoted that the union had abandoned its original demands. (See paragraph 10 above).

16. Although a decision one way or the other as to whether or not there had, in fact, been a change in the stand taken by the union would not in any way affect the actual finding of the tribunal on the issue before it, the tribunal are constrained to say that the second interpretation sought to be placed by the union on the word "promotion" cannot possibly be accepted, more especially in the light of the plain language used in the documents above referred to. (See paragraph 14 above).

17. From the statements of cases and comments thereon and from the evidence adduced, the following facts emerged:—

(1) Mr. Yeoh Teck Chye, who was a staff officer and occupied the No. 3 post in the current accounts department of the bank, took over as from the 9th of February, 1965 the duties and assumed the responsibilities of the No. 2 post in that department from Mr. R. J. Mackinnon;

(2) This move was in consequence of an official circular on office routine (hereinafter referred to as "the January office circular") which was issued by the Accountant, Mr. D. J. R. Smorthwaite on the 25th of January, 1965. The relevant paragraphs in that circular read as follows:—

"Mr. Boey will report to current accounts on Saturday 6th February where he will take over from Mr. Yeoh who will in turn take over from Mr. R. J. Mackinnon.

Mr. Mackinnon will assume charge of cash department with effect from Tuesday 9th February."

(Appendix 1 of the union's case);

(3) The No. 2 post in the current accounts dapartment is a post which at all relevant times was held substantively by an officer not below the rank of regional officer;

(4) Mr. Yeoh Teck Chye had in November, 1964 acted in this post on two occasions and all banks in Kuala Lumpur and Petaling Jaya had then been informed by letter signed by the Manager of the Bank that Mr. Yeoh Teck Chye was authorised to sign jointly with one other authorised person cheques drawn by the bank on the Bank Negara, Malaysia, and also to sign drawing vouchers until further notice. This authority was never withdrawn; and

(5) When Mr. Yeoh took over the duties and assumed the responsibilities of the No. 2 post in the current accounts department on the 9th of February, 1965, he was not informed that he was to do so in an acting capacity.

18. Mr. Dhoss for the union contended, *inter alia*, that as the January office circular did not state that Mr. Yeoh's appointment to Mr. R. J. Mackinnon's post was temporary or in an acting capacity it could only mean one thing, namely, that Mr. Yeoh's abilities and other things having been considered, he had been promoted to the No. 2 post in the current accounts department as from the 9th of February, 1965.

19. From the statements of cases and comments thereon and from the evidence adduced, the following facts also emerged:—

(1) the January office circular was a routine circular informing officers of the bank of postings and transfers;

(2) Promotions to the rank of regional officer can only be effected upon recommendation to and approval by the bank's head office in Hong Kong; and

(3) no such recommendation or approval had been made or obtained in relation to Mr. Yeoh Teck Chye.

The Award

20. After carefully considering the statements of cases, the comments thereon, the evidence adduced and the submissions made on behalf of both parties, the tribunal find that Mr. Yeoh was not promoted as claimed and accordingly, in answer to the submissions of the union, decide that Mr. Yeoh is not the substantive holder of any post of regional officer in the bank and that consequently he is not entitled to the pay and allowances and other conditions of service which would have been due to him as substantive holder of and discharging the duties and responsibilities of a regional officer.

Acting Allowance

21. The tribunal, however, note that Mr. Yeoh in fact officiated as and carried out the duties and assumed the responsibilities of a regional officer as the No. 2 in the current accounts department and consider that an appropriate allowance should be paid to him by the bank in relation thereto.

22. The tribunal, therefore, suggest that the amount of such allowance should be negotiated between the bank and the union within a period of one month. Failing agreement within the period, either party shall be at liberty to come before the tribunal again.

Representation

23. During the course of the hearing, it was disclosed that the head office of the bank had adopted a policy whereby all officers of the bank should not be members of a rank and file union.

24. This policy, at one time applied, *inter alia*, to officers of the rank of staff officer but, upon representations made by the union, the policy was amended to exclude staff officer and is now applicable to all officers of the rank of regional officer and above.

25. It was made apparent that, all considerations apart, so long as Mr. Yeoh remained a member of the union he could not, by reason of the policy of the bank, aspire to become a regional officer unless he first resigns from the union in the same way as other employees, before promotion to the rank of regional officer, had resigned from the union.

26. Mr. Yeoh, in his evidence, contended that there was no conflict of interests in respect of a regional officer holding office in the union. He conceded, however, that a line must be drawn somewhere (that is to say, a line between management and members of a union) and that the line could be set by negotiation, contending that international practice should be followed. In the present situaion, a regional officer could be called upon to be an officer-in-charge of a branch and he thought it was in order for such an officer in charge of a branch to be a member of the union and if he saw fit to come out on strike should the union call a strike. He stated that he himself would come out on strike and where there was a clash of loyalties, his loyalty would be with the union.

27. It is, of course, the undoubted right of workers to establish and join unions or associations of their own choice, but questions arise firstly as to whether or not there should be some prohibition against persons who aspire to be appointed or promoted to managerial positions being or continuing to be officers or members of any particular union and secondly should that question be answered in the affirmative, what positions would be considered to be managerial positions in each particular instance.

28. The tribunal were not called upon to answer those questions. The tribunal, however, note that negotiations are at present in progress in relation to the extent of the union's representation of the staff of the bank and express the hope that the points referred to and raised under this section of this award will be included amongst the matters discussed during those negotiations.

BATA SHOE CO. LTD. v. SINGAPORE MANUAL & MERCANTILE WORKERS' UNION

[I.A.C. (Tan Boon Chiang, President; K. Gould, Employer Panel Member; and Niranjan Singh Employee Panel Member) March 1, 1966]

[Singapore — Industrial Arbitration Court Case No. 151 of 1964]

Industrial relations — Recognition of trade union — Managerial staff — Representation of — Meaning of "trade dispute" and "industrial matter" under the Industrial Relations Ordinance, 1960 — Jurisdiction of the court to hear recognition dispute.

This dispute was directed to the court for arbitration under the provision of section 30(b) of the Industrial Relations Ordinance, 1960 and concerned the union's claim to represent the shop managers of the company. At the commencement of the hearing, the company raised a preliminary objection that the court has no jurisdiction to hear and determine this dispute on the grounds that (1) recognition of the union is not a trade dispute within the meaning of the Ordinance and (2) the definition of industrial matter under the Ordinance would rule out any possibility of a claim for recognition of the union as each of the shop managers has entered into an individual written contract with the company.

Held: (1) the claim of the union to represent the shop managers of the company is a trade dispute within the meaning of the Ordinance and as such the court has jurisdiction to hear and determine this dispute;

(2) in view of this finding, both parties should negotiate on whether the union should represent the shop managers of the company and if no settlement is reached, the matter shall be referred back to the court for determination.

Cases and book referred to:—

(1) *Sir Edward Betham Beetham & Anor.* v. *Trinidad Cement Ltd.* [1960] 2 W.L.R. 77.

(2) *Rex* v. *National Arbitration Tribunal, Ex parte Bolton Corporation* [1941] 2 K.B. 405; [1941] 2 All E.R. 800.

(3) *Citrine* on "Trade Union Law" at page 504.

INDUSTRIAL ARBITRATION DISPUTE heard on November 26, and December 2, 1964.

J. J. Rattray (Secretary of the Singapore Employers' Federation) for the company.

R. A. White (of the National Trade Union Congress Research Unit) for the union.

RULING

This dispute came to us by way of a direction from the Minister for Labour under the provisions of section 28(b) of the Industrial Relations Ordinance, 1960 and concerns the recognition of the Singapore Manual and Mercantile Workers' Union (hereinafter referred to as the union) as representing the shop managers of the Bata Shoe Company, Limited (hereinafter referred to as the company.

2. At the commencement of the proceedings, the company asked leave of the court to lodge a preliminary objection concerning the jurisdiction